

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

Aug 7 4 25 PM '92
DISPATCHED BY

MM Docket No. 92-161

In the Matter of

Amendment of Section 73.202(b), RM-8011
Table of Allotments.
FM Broadcast Stations.
(Glencoe and Le Sueur,
Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 20, 1992;

Released: August 7, 1992

Comment Date: September 28, 1992

Reply Comment Date: October 13, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by Waite Park Broadcasting Company ("petitioner"), permittee of Station KQXA, Channel 241A, Le Sueur, Minnesota, requesting the substitution of Channel 241C3 for Channel 241A and reallocation of the channel from Le Sueur, Minnesota, to Glencoe, Minnesota, as that community's first local service. Petitioner also requests modification of its construction permit for Station KQXA, Le Sueur, to specify Glencoe, Minnesota, as its community of license. Petitioner states that it will apply for Channel 241C3 at Glencoe, if allotted.

2. Petitioner seeks to invoke the provisions of Station 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Petitioner recognizes that the Commission prohibits the removal of a community's sole local transmission service, except "in rare circumstances where removal of a local service might serve the public interest." 5 FCC Rcd at 7096. Petitioner claims that removal of Le Sueur's sole local transmission service is warranted in this case.

3. Petitioner states that the reallocation and upgrading of Channel 241A would provide Glencoe, a community of 4,648 persons,¹ with its first local transmission service, whereas it is currently impossible to provide any service at Le Sueur, a community of 3,763. Petitioner notes that it has been attempting to construct and operate Station

KQXA at Le Sueur since April 14, 1991. However, petitioner states that the only transmitter location at Le Sueur which meets the Commission's spacing rules is a small portion of eastern Sibley County, Minnesota. According to petitioner, it applied to the Sibley County Planning Commission on January 8, 1992, for a conditional use permit to construct a transmitting tower for Station KQXA. The Planning Commission denied its request which was then referred to the Sibley County Board of Commissioners for review. On February 25, 1992, the request was again denied. Petitioner further states that there are no existing towers available to it which are fully spaced and would provide the required city grade signal over Le Sueur. As a consequence, petitioner has never operated Station KQXA at Le Sueur. Petitioner claims that a site is available at Glencoe that fully meets the Commission's channel spacing rules. According to petitioner, deleting the allotment at Le Sueur will not deprive the community of broadcast service as four FM stations serve Le Sueur with a 60 dBu coverage contour. Station KRBI(AM), St. Peter, Minnesota, encompasses Le Sueur with its 2 mV/m signal contour. Petitioner claims that Station KRBI(AM) has provided significant programming directed towards the needs of the residents of Le Sueur since 1957, and since 1959 has maintained a full time studio and office in Le Sueur. Petitioner believes that reallocation of the channel from Le Sueur to Glencoe will create a more equitable distribution of broadcast service and a more efficient use of the broadcast spectrum.

4. Petitioner states that Glencoe (population 4,648 persons) is an incorporated city, located in the south central portion of the state. Petitioner further states that Glencoe is the county seat of McLeod County, has its own zip code and is a self-governing community. According to information published by the Glencoe Chamber of Commerce, the community has seven churches, two elementary schools, one intermediate and one high school and several parochial schools. Glencoe has its own fire department, police and sheriff's department, hospital and medical clinic and a newspaper. Glencoe also has a Jaycees, Lion's club, VFW Post and Auxiliary, an American Legion and the usual complement of businesses generally found in communities of this size. Petitioner contends that all the indicia support a conclusion that Glencoe is a community for allotment purposes.

5. An engineering analysis has determined that Channel 241C3 can be allotted to Glencoe in compliance with the Commission's minimum distance separation requirements at petitioner's specified site.²

6. We do not generally believe that the public interest is served by removing a community's sole local service merely to provide a first local transmission service to another community. While the removal of Channel 241A from Le Sueur will remove that community's only potential local service, and provide a first local transmission service to Glencoe, we tentatively conclude that petitioner has shown that it is unable to operate the station at Le Sueur despite diligent efforts. Since Station KQXA has never been on the air, a change in community will not cause any disruption to existing service. Therefore, we believe the public interest would be served by seeking comments on this proposal. We request comments on our

¹ Population figures are taken from the 1990 census.

² The coordinates for Channel 241C3 at Glencoe are 44-46-09

tenative conclusion that a waiver of our restriction on removal of sole existing local transmission service is warranted in this instance.

7. As requested, we shall propose to modify the construction permit for Channel 241A, Le Sueur, to specify operation on Channel 241C3 at Glencoe in accordance with Sections 1.420(g) and (i) of the Commission's Rules. We shall not accept competing expressions of interest in the use of Channel 241C3 at Glencoe or require the petitioner to demonstrate the availability of an additional equivalent class channel at Glencoe.

8. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
Glencoe, Minnesota	--	241C3
Le Sueur, Minnesota	241A	--

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **September 28, 1992**, and reply comments on or before **October 13, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John S. Neely
Miller & Miller, P.C.
P.O. Box 33003
Washington, D.C. 20033

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.

However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.